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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	OAH Case No. 2017090182
)	
THE COMMISSIONER OF BUSINESS)	NMLS No. 1569753
OVERSIGHT,)	SETTLEMENT AGREEMENT
)	
Complainant,)	Hearing Dates: March 7-8, 2018
v.)	Hearing Time: 9:00 a.m.
)	Judge: Unassigned
LUCA SILVERIO SPIGNO, as an individual,)	
)	
Respondent.)	
)	
)	
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)	
)	

This Settlement Agreement is entered between the Commissioner of Business Oversight (Commissioner) and Luca Silverio Spigno (Spigno) and is made with respect to the following facts:

RECITALS

A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of lending and servicing residential mortgage loans under the

California Financing Law¹ (CFL) (Fin. Code, § 22000 et seq.), including mortgage loan originators (MLOs).

B. On January 4, 2017, Spigno applied for a MLO license through the Nationwide Multistate Licensing System (NMLS) seeking licensure as a MLO before the Department. Spigno's MU4 license application disclosed he pleaded no contest to a drug-related felony in 2016.

C. The Commissioner approved Spigno's license application on January 20, 2017. On January 26, Spigno submitted additional documents through the NMLS concerning his criminal conviction, including a Minute Order from the Los Angeles Superior Court dated January 5, 2016.

D. After further review of Spigno's MU4, on February 2, 2017, the Commissioner's staff changed the license status of Spigno's license from "Approved" to "Approved-Deficient," and created a license item in the NMLS advising Spigno that his MU4 was under review to determine whether he met the requirements for licensure as a MLO.

E. On June 9, 2017, the Commissioner issued a Notice of Intention to Issue Order Revoking Mortgage Loan Originator License; Accusation in Support of Notice of Intention to Issue Order Revoking Mortgage Loan Originator License of Luca Silverio Spigno; and other supporting pleadings (collectively, Accusation).

F. Spigno timely filed his Notice of Defense, and this matter is currently set for a two-day hearing on March 7 and 8, 2018, before the Office of Administrative Hearings, Los Angeles.

G. The Commissioner finds that entering into this Settlement Agreement is in the public interest, protects consumers, and is consistent with the purposes fairly intended by the policies and provisions of the CFL.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein, the parties agree as follows:

¹ Effective October 4, 2017, the name of the "California Finance Lenders Law" changed to the "California Financing Law." (Assem. Bill No. 1284 (2017-2018 Reg. Sess.) § 4.) For purposes of this document, a reference to the California Financing Law means the California Finance Lenders Law before October 4, 2017, and the California Financing Law on and after that date. (Fin. Code, § 22000.)

TERMS AND CONDITIONS

1. Purpose. It is the intention and desire of the parties to resolve this matter without the necessity of a hearing or other litigation for the purpose of judicial economy and expediency and to avoid the expense of a hearing and possible further court proceedings.

2. Waiver of Hearing Rights. Spigno agrees that this Settlement Agreement shall have the effect of withdrawing his request for an administrative hearing on the matter set forth herein. Spigno acknowledges his right to an administrative hearing under the CFL in connection with the Accusation and hereby waives such right to a hearing and to any reconsideration, appeal, or other rights which may be afforded to him under the CFL, the Administrative Procedure Act (APA) (Gov. Code, § 11370 et seq.), the Code of Civil Procedure (CCP) (Code Civ. Proc., § 1 et seq.), or any provision of law in connection with this matter.

3. Acknowledgment. Spigno acknowledges that the Commissioner issued an Accusation dated June 9, 2017, in which the Commissioner alleges Spigno does not meet the criteria to hold a MLO license under Financial Code sections 22109.1 and 22172, as discussed above.

4. Revocation of License. Spigno agrees that for the 36-month period from the Effective Date of this Agreement, if the Department makes a finding that Spigno has violated or is violating any provision of the CFL, the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.), or any rule, regulation, or law under the jurisdiction of the Commissioner, the Commissioner may, in her discretion, automatically revoke any license held by or deny any pending application(s) of Spigno. Spigno hereby waives any notice and hearing rights to contest such revocation or denial(s) which may be afforded under the CFL, APA, CCP, or any other provision of law in connection with this matter.

5. Continuing Education. Spigno agrees to annually take at least 16 hours of continuing education offered by a NMLS approved vendor for the next 36 months and agrees to submit proof of compliance to Blaine A. Noblett, Senior Counsel, Enforcement Division. The first report is due on December 31, 2018. The second report is due on December 31, 2019. The third report is due on December 31, 2020.

1 6. Remedy for Breach. Spigno acknowledges that failure to comply with the Continuing
2 Education term of this Settlement Agreement, as set forth in paragraph 5., above, shall be deemed a
3 breach and cause for the Commissioner to immediately revoke any license held by or deny any
4 pending application(s) of Spigno. Spigno hereby waives any notice and hearing rights to contest such
5 revocation or denial(s) which may be afforded under the CFL, APA, CCP, or any other provision of
6 law in connection with this matter.

7 7. Full and Final Settlement. The parties hereby acknowledge and agree that this
8 Settlement Agreement is intended to constitute a full, final, and complete resolution of Spigno's
9 alleged violations of the CFL as identified herein. No further proceedings or actions will be brought
10 by the Commissioner in connection with these matters under the CFL or any other provision of law,
11 excepting any proceeding to enforce compliance with the terms of this Settlement Agreement or
12 action if such proceeding is based upon discovery of new and further violations of the CFL which
13 do not form the basis for this Settlement Agreement or which Spigno knowingly concealed from the
14 Commissioner.

15 8. Commissioner's Duties. The parties further acknowledge and agree that nothing in
16 this Settlement Agreement shall limit the Commissioner's ability to assist any other agency (city,
17 county, state, or federal) with any prosecution, administrative, civil, or criminal, brought by any
18 such agency against Spigno or any other person based upon any of the activities alleged in these
19 matters or otherwise.

20 9. Binding. This Settlement Agreement is binding on all heirs, assigns, or successors in
21 interest.

22 10. Independent Legal Advice. Each of the parties represents, warrants, and agrees that
23 he, she, or it has received independent advice from its attorney(s) or representative(s) with respect
24 to the advisability of executing this Settlement Agreement.

25 11. Counterparts. The parties agree that this Settlement Agreement may be executed in
26 one or more separate counterparts, each of which shall be deemed an original when so executed.
27 Such counterparts shall together constitute and be one and the same instrument.
28

1 12. Waiver, Modification, and Qualified Integration. The waiver of any provision of this
2 Settlement Agreement shall not operate to waive any other provision set forth herein. No waiver,
3 amendment, or modification of this Settlement Agreement shall be valid or binding to any extent
4 unless it is in writing and signed by all the parties affected by it.

5 13. Headings and Governing Law. The headings to the paragraphs of this Settlement
6 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
7 construction or interpretation of the provisions hereof. This Settlement Agreement shall be
8 construed and enforced in accordance with and governed by California law.

9 14. Full Integration. Each of the parties represents, warrants, and agrees that in executing
10 this Settlement Agreement he, she, or it has relied solely on the statements set forth herein and the
11 advice of its own counsel. Each of the parties further represents, warrants, and agrees that in
12 executing this Settlement Agreement he, she, or it has placed no reliance on any statement,
13 representation, or promise of any other party, or any other person or entity not expressly set forth
14 herein, or upon the failure of any party or any other person or entity to make any statement,
15 representation, or disclosure of anything whatsoever. The parties have included this clause (1) to
16 preclude any claim that any party was in any way fraudulently induced to execute this Settlement
17 Agreement and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
18 contradict the terms of this Settlement Agreement.

19 15. Presumption from Drafting. In that the parties have had the opportunity to draft,
20 review, and edit the language of this Settlement Agreement, no presumption for or against any party
21 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
22 relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive
23 the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases
24 of uncertainty, language of a contract should be interpreted most strongly against the party that
25 caused the uncertainty to exist.

26 16. Voluntary Agreement. Spigno enters into this Settlement Agreement voluntarily and
27 without coercion and acknowledges that no promises, threats, or assurances have been made by the
28 Commissioner, or any officer or agent thereof, about this Settlement Agreement.

17. Effective Date. This Settlement Agreement shall become final and effective when signed by all parties and delivered by the Commissioner's agent via U.S. Mail to Spigno at his address of record.

18. Notice. Any notices required under this Settlement Agreement shall be provided to each party at the following addresses:

If to Respondent to: Luca Silverio Spigno
1106 2nd Street, #251
Encinitas, California 92024

If to the Commissioner to: Blaine A. Noblett, Senior Counsel
Department of Business Oversight
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344

19. Authority to Execute. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

Dated: 3/1/18

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

LUCA SILVERIO SPIGNO, Respondent

Dated: 2/28/18

By _____
LUCA SILVERIO SPIGNO